

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEALS Nos 169 of 1999

with

166 of 1999 , 167 of 1999 and 168 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.

2. To be referred to the Reporter or not? : YES
Yes.except bracketed portion

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

INCOME TAX OFFICER,

Versus

ADINATH INDUSTRIES

Appearance:

MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/10/1999

ORAL JUDGEMEN(Per:Patel.J)

#. Tax Appeal No. 169 of 1999 and other companion appeals arise out of two judgments. Tax Appeal No. 166 of 1999 is arising on a consequential order that might be required to be passed.

#. For the Assessment Year 1984-85 the assessee M/s Adinath Industries was assessed under section 143 of the Income-tax Act 1961 (hereinafter referred to as the Act). Along with its return filed on 28.7.1984 showing the total income at Rs. 60,814/-, a statement showing computation of total income was filed along with copies of profit and loss account, manufacturing account, balance sheet and partner's capital account. It appears that the assessing Officer issued show cause notice on 23.1.1987 pointing to the assessee as under:

" On inquiry with the sales-tax authorities as also with the I.T.O. Junagadh(who is having jurisdiction over Keshod), it is learnt that M/s Geeta Industries which is alleged to be the proprietary concern of one Shri Kishorechandra Hansraj at the given address at Keshod is merely a billing agent and there is no genuine seller as such. It has come to light that the S.T.Regn. No. being 67110528 dtd. 19.11.82 was cancelled with effect from 7.12.1982 by the concerned authority. Thus, on this score also, I am of the view that the purchases from the above party were of the fake nature and the alleged purchases were nothing but to claim your own stock of commodity in question titled as stocks of ground nut oil cake as purchases during the year is concerned. This is further supported by way of cheques issued for relevant purchases which were firstly credited to party's bank account with UBI Dhoraji and subsequently withdrawn by way of self bearer cheques on the very day of depositing the proceeds realised for alleged sales by Keshod party.

You are however, requested to produce the party from whom the alleged purchases are claimed i.e. Keshod party. The mode of transportation with truck no. etc. should be furnished. Any evidence produced, in this behalf will be considered carefully."

#. The assessee in his reply dated 26.2.1987 through his Chartered Accountant submitted as under:

- "A) The assessee has purchased Ground Nut Oil Cakes from M/s Geeta Industries, Keshod during the A.Y. 2039 & 2040. The details of purchases have already been furnished earlier.
- B) In this connection, it is to be mentioned that the said goods were purchased through Dalal and a copy of Dalal bill is enclosed wherein Dalal is paid on these goods.
- C) The detailed procedure from the stage of receipt of goods to final production is mentioned in the Annexure.
- D) From the said details, it is to be stated that the goods from the said party have been received and have gone into production. This can be verified from the Gate Pass, Avak Chitti and Weight Chitti-supporting of all are enclosed herewith.
- E) The said goods are sent to Laboratory for report and sample report etc. are also sent herewith. From the sample report, quality difference is arrived and the party is also paid the difference or recovered also from the party, as the case may be.
- F) The said goods is entered in our day to day receipt register where the assessee is entering all the receipt cakes.
- G) These goods are produced and the production register shows the said production, copy is enclosed.
- H) As per excise rule, the party has to enter the materials in R.G.4 Form . The copy of the said form is enclosed herewith.
- I) From the details submitted, it can be verified that the purchase is from Geeta Industries and are genuine Purchase and not of a fake nature as stated in your letter.
- J) It is to be stated that from the details filed, it can be verified that without these purchases no production would have been, to that extent, would have been possible and as such, there is no question of any fake nature purchases.

K) It is to be stated that the assessee has paid to the party by the cheques and the same has been debited in our bank account. It is to be stated that it is not our concern how the party operate its own bank account nor do we know anything about the same.

L) We had already given the full address of M/s Geeta Industries, Keshod, at which place he may be contacted.

M) Regarding the mode of transaction with the truck number, we had already supplied the details of transportation with truck number etc. in details submitted earlier.

N) In support of our purchases we are submitting full evidence as mentioned in Annexure and as mentioned above in the letter.

O) It may be stated that M/s Geeta Industries has supplied ground nut oil cake to us only but it had supplied to so many parties.

P) All the above evidence and support are on evidence for the purchases from M/s Geeta Industries.

Q) In view of this, the question of taxing these purchases in the hands of the firm does not arise."

#. The Assessing Officer considered the materials and found that the statement with regard to the transaction could not be confirmed by one Mahesh a partner of M/s Vadilal Popatlal & Sons. The Assessing Officer also found that the Dalal as per letter dated 18.2.1996 produced copy of the bill dated 5.12.1983 issued in favour of the alleged party M/s Geeta Industries for Rs. 5,100/- being brokerage received by cash for sale of oil cake. It appears that thereafter the said firm was reconstituted in the name of Maganlal Vashram & Sons. Maganlal Vashram & Sons had totally blank books of accounts. The Assessing Officer also came to the conclusion that the letters dated 1.8.1983 and 12.8.1983 alleged to have been signed by one Kishor were not in the handwritings of said Kishor as hand writings were different, A.O. held that the same were not genuine. The Assessing Officer also noticed that cheques were issued in favour of M/s Geeta Industries of which Shri

K.H.Lakhani was the proprietor. In turn said cheques were deposited in the bank account at Dhoraji and the proceeds of the cheques were withdrawn by bearer cheques. The Assessing Officer arrived at a conclusion that persons who received the amount at the Bank counter were connected either directly or indirectly with the assessee firm and as such, the amount withdrawn out of bank account in cash as discussed above, had by all means passed on to assessee's hand. In a statement it has been pointed out that in all 16 cheques were issued and by 15 cheques the amount was withdrawn by five different persons. In view of all these materials the Assessing Officer was of the view that the transactions indicated were fake.

#. It is required to be noted that the Tribunal has considered the case of M/s Arun Industries having identical facts. The Tribunal appreciated the evidence. We reproduce relevant observations/findings from the order in case of M/s Arun Industries. The Tribunal has reproduce the same in greater details to show that the purchases cannot be doubted. The purchases were properly recorded in the books of accounts. The trading account was backed up by detailed quantitative particulars. Before the A.O.. the bills were produced from the four parties from whom it was alleged that the purchases made were not genuine. At the time the purchases were made these were registered dealers under the sales tax law. The observations of the A.O. that these people had also operated a bank account from the same bank and amounts credited to their accounts were promptly withdrawn may give rise to some suspicious but there was no evidence to show that the assessee had not made any purchases. At best it could be inferred that these parties were set up by somebody else and the reasons could be manifold for that. But to say that the purchases made at all were at an inflated sale price would be without any justification. At the cost of repetition Tribunal observed that the assessee's trading accounts were supported by proper quantitative details. There was no evidence, which would go to indicate that the price at which the goods were purchased from these four parties was in excess of the prevailing market price. The purchases were supported by the payment of octroi duty paid by the assessee and also the purchase tax. The A.O.. for the assessment year 1984-85 reopened the assessment under the provisions of sec.147 of the I.T.Act. This assessment was dropped by the A.O. by his order dtd. 12.2.91. In the order the A.O. observed that in respect of the purchases from M/s Geeta Industries and M/s Shailesh Industries. for asstt.year

1985-86 full details were given and they were also accounted for in day to day stock. The Tribunal on appreciation observed that it is true that there are some suspicious features like the purchasers having the same bank accounts in the same branch of the assessee and further that their sales tax registration numbers were cancelled but no addition could be made merely on the basis of suspicious and conjecture. The Tribunal allowed the appeal preferred by the assessee. What is required to be noted is that the A.O. himself was satisfied about the dealings of M/s Geeta Industries for A.Y.1985-86 with M/s Arun Industries, and dropped the proceedings for A.Y. 1985-86. The A.O. believed the existence of M/s Geeta Industries for that year.

#. Not only this but it appears that Geeta Industries was supplying materials not only to the assessee but to others. In case of M/s Arun Industries, the amount paid to M/s Geeta Industries was disallowed. However, the Tribunal on appreciation of evidence deleted the entire disallowance which has been upheld by this Court and by the Apex Court as observed in para 2.4 of the judgment of the Tribunal. In M/s Arun Industries, against the decision of the High Court, SLP was preferred by the revenue and the same has been rejected. The Tribunal has considered that aspect also.

#. In the present case, details about purchase were furnished. Transactions were through a broker whose bill was produced. All details from the stage of receipt to production were produced. For further verification assessee produced gate pass, Avak Chithi (receipt note) and weight note. Assessee produced laboratory report and sample report. It pointed out the difference paid or recovered in view of reports. Assessee produced R.G.4 form to show the details entered as per excise Rules. Assessee pointed out the production and purchase of raw materials. Assessee submitted the details about the transaction, truck number etc. Thus assessee produced relevant materials to show purchase of materials and its use in production. As indicated above, A.O. has accepted the existence of M/s Geeta Industries in case of M/s Arun Industries for A.Y.1985-86. The Tribunal appreciated all these facts in arriving at a conclusion.

#. It clearly appears that matter has been disposed of on appreciation of evidence and when the matter has been decided by the Tribunal on appreciation of evidence, it cannot be said that it raises a question of law. The Tribunal pointed out that at best it could be inferred that these parties were set up by somebody else and the

reasons could be manifold for that. It is very much surprising that in the instant case the Assessing Officer has drawn a presumption that the amount has come back in the assessee's hands, without any evidence whatsoever merely on the basis of withdrawal of amounts from the account of M/s Geeta Industries.

#. Mr. Naik learned counsel for the revenue submitted that if the court is accepting the existence of M/s Geeta Industries then nothing is required to be argued by him. It is required to be noted that the amount has been paid by the cheques and the party has withdrawn the amount by bearer cheques. Mr. Naik submitted that from the same bank the amount has been withdrawn. According to our opinion, it goes without saying that it was within the knowledge of the banker as to who was the account holder and who withdrew the amount from the same bank. The Assessing Officer by due diligence could have unearthed the fact that M/s Geeta Industries is a bogus party by recording statement of the bank manager, accountant or cashier or the party who introduced M/s Geeta Industries to the bank. We are of the view that the matter is in the realm of appreciation of evidence and no interference is called for in the matter.

{##. It is required to be borne in mind by the Assessing Officers that when they are making inquiries on important matters they have to see that the inquiry is concluded at the logical end. This we are expressing because Mr. Naik for the revenue has taken much pains for arguing the matter but he was later on helpless in view of the fact that there were some gaps or lacuna.} In the circumstances, the appeals are dismissed. Notice discharged in all matters. No order as to costs.

Copy of this order may be kept in other matters also.

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